

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

WOODROW FLEMMING,

Plaintiff,

-v-

No. 9:13-CV-0816
(DNH/RFT)

NANCY SMITH, Nurse Administrator, Upstate
Correctional Facility; PAUL M. DUVALL, 11 Block
Sgt., Upstate Correctional Facility; EDMUND BARR,
C.O., Upstate Correctional Facility; JOHN J. FINNOZZO;
GERALDINE WILSON, Nurse, Upstate Correctional
Facility; and RICHARD ADAM, Med. Doctor, Upstate
Correctional Facility,

Defendants.

APPEARANCES:

OF COUNSEL:

WOODROW FLEMMING
Plaintiff, Pro Se
P.O. Box 146
New York, NY 10039

HON. ERIC T. SCHNEIDERMAN
Attorney General for the State of New York
Attorney for Defendant
The Capitol
Albany, NY 12224

ADRIENNE J. KERWIN, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Woodrow Flemming brought this civil rights action pursuant to 42 U.S.C. § 1983. On August 20, 2014, the Honorable Randolph F. Treece, United States Magistrate Judge, advised by Report-Recommendation that defendants' motion to dismiss be

granted and that defendants Duvall, Smith, Adam, Barr, and Finnozzo be dismissed from this action. Magistrate Judge Treece also recommended that plaintiff be granted leave to amend his claim that defendant Wilson purposefully withheld permission for him to use a walking cane. Plaintiff timely filed objections to the Report-Recommendation.

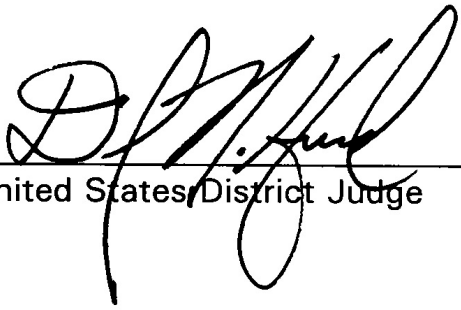
Based upon a de novo review of the portions of the Report-Recommendation to which plaintiff objected, the Report-Recommendation is accepted and adopted in all respects. See 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that

1. Defendants' motion to dismiss is GRANTED;
2. Defendants Duvall, Smith, Adam, Barr, Finnozzo, and Wilson are DISMISSED from this action;
3. Plaintiff is granted leave to amend his claim that defendant Wilson purposefully withheld permission for him to use a walking cane. If he wishes to do so, he must file an amended complaint within thirty (30) days of the date of this Decision and Order complying with the guidelines set forth in the Report-Recommendation and setting out any wrongful conduct by defendant Wilson;
4. In the event plaintiff does not file an amended complaint within thirty (30) days of the date of this Decision and Order setting forth a claim against defendant Wilson, the complaint will be DISMISSED without further order; and
5. The Clerk is directed to serve a copy of this Decision and Order upon plaintiff in accordance with the Local Rules and close the file.

IT IS SO ORDERED.



United States District Judge

Dated: September 29, 2014
Utica, New York.